IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:
Cheng-Liang HOU

Art Unit: 2616

Application No.: 10/748,223

Examiner: Nittaya Juntima

Filed: December 31, 2003

Attorney Dkt. No.: 058268.00351

For: SYSTEM AND METHOD FOR CONTROLLING PACKET TRANSMISSION USING A PLURALITY OF BUCKETS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

July 15, 2008

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the July 12, 2005 Official Gazette Notice, Applicant hereby submits this Pre-Appeal Brief Request for Review of the final rejections of claims 1-19 in the above identified application. Claims 1-19 were finally rejected in the Office Action dated April 29, 2008. Applicant filed a Response to the Final Office Action on June 6, 2008, and the Office issued an Advisory Action dated July 3, 2008 maintaining the final rejections of claims 1-19. Applicant hereby appeals these rejections as being clearly erroneous and submit this Pre-Appeal Brief Request for Review.

Claims 1-6, 9-16 and 19 were rejected under 35 U.S.C. §102(e) as being anticipated by Buskirk (U.S. Patent Publication No. 2006/0159019). This rejection is respectfully submitted as being clearly erroneous. In particular, the Office Action has improperly relied on the subject matter disclosed in claim 104 of Buskirk to reject the claims of the present application. Claim 104 is the product of an attempt to provoke an interference by the assignee of Buskirk, and the subject matter of claim 104 is not enabled by the specification under §112, first paragraph. Therefore, in relying on the subject matter of claim 104, the Office Action failed to properly reject the claims of the present application. This failure constitutes clear error in the Office Action.

Initially, Applicant submits that claim 104 of Buskirk cannot be used to support a rejection of the claims of the present application. Claim 104 of Buskirk was introduced into the

specification of Buskirk for the purpose of provoking an interference with the present application (note the carbon copy of claim 104 of Buskirk with respect to claim 1 of the present application). If the contents of Buskirk's disclosure were to support the subject matter of claim 104 then there would be no reason to rely on claim 104 to reject the claims of the present application. If the contents of claim 104 are not supported by Buskirk, then relying on them would be a violation of §112, first paragraph, under the enablement requirement. Claim 104 of Buskirk should not be cited in any rejection used to reject the claims of the present application. Therefore, in relying on the teachings of claim 104 to reject the claims, the Office Action has failed to properly reject the claims which constitutes clear error.

The Final Office Action dated April 29, 2008 relied on the teachings of claim 104 to reject the claims (see last 5 lines of page 2). As established above, relying on claim 104 of Buskirk is clearly improper. Therefore, the Final Office Action was improper. Next, referring to the Advisory Action, the rejection attempted to reject the claims, **for the first time**, without using the subject matter of claim 104 and instead asserted that classifier 402 in itself allegedly teaches the subject matter of claim 1 of the present application. The Advisory Action also alleged, **for the first time**, that "Since more than one packet type is present and classified, the classifier 402 must logically set a plurality of packet type filters so that each of the packet type filters can filter/classify a different flow/packet type."

Clearly, the Advisory Action admits that Buskirk does not explicitly disclose "setting a plurality of packet type filters" because in the statement that "the classifier 402 must logically set a plurality of packet type filters", the Advisory Action is implying that Buskirk does not explicitly teach all of features of the claims. Therefore, for at least the reason that it is admitted that Buskirk does not explicitly disclose all of the subject matter of claim 1, the rejection under §102(e) is improper and constitutes clear error.

With regard to the classifier 104, paragraph [0055] of Buskirk discloses a classifier 402 that classifies/parses the incoming stream of packets into separate logical flows with the flow identifier embedded in the local header of a cell/packet (see FIG. 4 of Buskirk). The classifier 402 is a single unit that is used to classify individual packets into a variety of different "flows" or "connections" (see paragraphs [0055] and [0058] of Buskirk). In operation an upstream classifier module classifies the incoming stream and assigns a flow identifier which is used to classify a packet to a corresponding flow (see paragraph [0057], lines 1-4 of Buskirk). Classifier

402 is a single entity that does not disclose or suggest having a plurality of packet type filters. In addition, because Buskirk does not disclose a plurality of packet type filters, Buskirk certainly does not disclose setting a plurality of packet type filters so that **each** of the packet type filters performs filtering for a **different** packet type, as recited in claim 1 (emphasis added).

The fact that Buskirk does not disclose a plurality of anything constitutes clear error to assume that Buskirk discloses "setting a plurality of packet type filters so that each of said packet type filters performs filtering for a different packet type", as recited, in part, in independent claim 1 and similarly in independent claims 10 and 11.

As stated above, the only packet handling performed by Buskirk, identified by the Office Action as a filtering operation, is performed by the classifier 402. The single/individual/solitary classifier 402 handles all packet classifying regardless of the packet's type. The specification of Buskirk simply does not provide support for the above noted features of claim 104 of Buskirk or claim 1 of the present application, and thus relying on Buskirk to reject the claims constitutes clear error.

Applicant kindly requests that claimed subject matter recited in independent claim 1, and similarly in independent claims 10 and 11, and those claims dependent thereon, be allowed over Buskirk. Withdrawal of the rejection of claims 1-6, 9-16 and 19 is kindly requested.

Claims 7, 8, 17 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Buskirk. Applicant submits that for at least the reasons stated above, Buskirk fails to teach or suggest all of the subject matter of independent claims 1, 10 and 11. In addition to the above noted deficiencies of Buskirk, claims 7, 8, 17 and 18 are dependent on claims 1 and 11, and should be allowed for at least the same reasons as claims 1 and 11, and for the specific features recited therein. Withdrawal of the rejection of the claims 7, 8, 17 and 18 is kindly requested.

Claims 1-3, 6-13 and 16-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over Weberhofer (U.S. Patent No. 6,014,384) in view of paragraph [0003] of Applicant's disclosure, hereinafter 'A.D. [0003]'. This rejection fails to address all of the subject matter of the claims, and thus constitutes clear error.

Weberhofer discloses that ATM cells are first identified using a mapper 18 which determines the QoS class of the ATM cell and directs the identified ATM cell to the proper queue 19.1, 19.2, 19.3 or 19.4 based on an assigned transmission priority (see column 4, lines 45-50 and FIG. 2 of Weberhofer). The mapper 18 is further configured to assign QoS classes to

the ATM cells based on the information contained in the header of the ATM cells and an allocation table (see column 5, lines 3-6 of Weberhofer).

Weberhofer does not teach or suggest "setting a plurality of packet type filters so that each of said packet type filters performs filtering for a different packet type", as recited, in part, in claim 1. The Office Action incorrectly concluded that the mapper 18 and queues 19.1, 19.2, 19.3 and 19.3 are the same as a plurality of packet type filters. Applicants submit that the mapper 18 and the queues 19.1, 19.2, 19.3 and 19.4 do not teach a plurality of filters, as recited, in part, in claim 1.

Referring to the specification of the present application, FIG. 2 illustrates **two packet filters (PTFs) which include PTF 205 and PTF 210** (emphasis added). An example of the "filter" operation is disclosed on line 9 of paragraph [0020] of the present application as "a packet has been filtered, e.g., determined to be of a certain type."

The subject matter of the claims clearly recites that there are "**a plurality of packet type filters**"(emphasis added). Webenhofer fails to disclose a plurality of packet type filters and uses **a single/individual/solitary "mapper 18" which determines which QoS class a cell [packet] belongs to** (see column 4, lines 45-50 of Webenhofer). The mapper 18 is what determines the QoS of the cells, and because there is only **one** mapper 18, there can be no plurality of mappers, filters or any other component that is used to perform the cell/packet type determining operations.

The Office Action defended the position that because mapper 18 can classify more than one cell type it must have "a number of different means/elements that classify/identify different QoS classes and that each means/element, whether it is hardware or software, must be dedicated to identifying one of the QoS classes and assigning it to an ATM cell." Clearly, the Office Action's admitted statement that the mapper 18 "must" have a number of different elements comparable to the filters of claim 1, is evidence that Weberhofer does not teach a plurality of filters used to filter packets.

Furthermore, mapper 18 is a single entity that does not disclose or suggest having a plurality of packet type filters. In addition, because Weberhofer does not disclose a plurality of packet type filters, Weberhofer certainly does not disclose setting a plurality of packet type filters so that **each** of the packet type filters performs filtering for a **different** packet type, as recited in claim 1 (emphasis added).

For at least the reasons discussed above, Applicants respectfully submit that independent claim 1, and similarly independent claims 10-11 are allowable over the Applicant's disclosure and Weberhofer. By virtue of dependency, claims 2-9 and 12-19 are also allowable over Weberhofer and Applicant's disclosure. Withdrawal of the rejection of those claims and an allowance thereof is respectfully requested.

Claims 4-5 and 14-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Weberhofer in view of A.D. [0003], and in further view of Zhang (U.S. Patent No. 7,130,917). Applicants respectfully traverse this rejection. As stated above, Weberhofer and A.D. [0003] fail to teach all of the subject matter of independent claims 1, 10 and 11. Furthermore, Applicants submit that Zhang also fails to cure the deficiencies of Weberhofer and A.D. [0003] with respect to the claims.

For at least the reasons discussed above, Applicants respectfully submit that the cited references fail to teach or suggest all of the elements of the claimed invention. These distinctions are more than sufficient to render the claimed invention unanticipated and unobvious. It is therefore respectfully requested that all of claims 1-19 be allowed, and this application passed to issue.

Reconsideration and withdrawal of the rejections, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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Enclosures: PTO/SB/33 Form, Notice of Appeal, Check No. 19110

PTO/SB/33 (07-05)
United States Patent & Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 058268.00351
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed Name _____	Application Number: 10/748,223 Filed: December 31, 2003 First Named Inventor: Chang-Linag HOI Art Unit: 2616 Examiner: Nittaya Juntima

Mail Stop AF
Commissioner for Patents
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Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ Applicant/Inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed

☒ Attorney or agent of record.
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☐ Attorney or agent acting under 37 CFR 1.34.
Reg. No. is acting under 37 CFR 1.34 _____

Signature

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Typed or printed name

703-.720.7800
Telephone number

July 15, 2008
Date

NOTE: Signatures of all of the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.